



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: MNR OPR

Introduction

This was an application for Review Consideration by the Tenant with respect to a Direct Request Decision issued on September 24, 2013, based on an allegation that the decision was received by fraud on the part of the landlord.

Division 2, Section 79(2) under the *Residential Tenancy Act* says a party to the dispute may apply for a review of the decision. The application must contain reasons to support one or more of the grounds for review:

1. A party was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the party's control.
2. A party has new and relevant evidence that was not available at the time of the original hearing.
3. A party has evidence that the director's decision or order was obtained by fraud.

Issues

Should the Decision of September 24, 2013 should be reviewed?

Facts and Analysis

The tenant submitted written testimony to indicate that the landlord obtained the Direct Request decision by fraud.

The tenant acknowledged receipt of the Notice of Direct Request Proceeding. However, the tenant stated:

"The landlord gave us the notice of direct request in such a manner that they knew it was late and not on time. Number 2 Line: The person submitting the evidence knew that it was false. We been late on rent before, and my Landlord understood." (Reproduced as written.)

Under the section titled, "How did the person who submitted the information know it was false?" the tenant wrote:

“The landlord is suppose to let us know whether or not they will stop the direct request and gave us the notice of request in such a way we were not prepared and we did not know what was going on with the house we live in.”

I find that records indicate that the landlord made application on September 16, 2013 seeking a monetary order for rent owed and an order of possession based on a Ten Day Notice to End Tenancy for Unpaid Rent dated September 3, 2013. A copy of the proof of service was in evidence showing that the landlord served the Notice of Direct Request by registered mail sent on September 16, 2013. This was confirmed by submission of the Canada Post tracking slip.

Rule 3 of the Residential Tenancy Rules of Procedure states that, together with a copy of the Application for Dispute Resolution, the applicant must serve each respondent with copies of the notice of dispute resolution proceeding letter provided to the applicant by the Residential Tenancy Branch, the dispute resolution proceeding information package provided by the Residential Tenancy Branch, the details of any monetary claim being made, and any other evidence accepted by the Residential Tenancy Branch with the application or that is available to be served.

Section 89(1) of the Act states that application for dispute resolution must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides** or, if the person is a landlord, to the address at which the person carries on business as a landlord; (My emphasis).
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) *[director's orders: delivery and service of documents]*.

Based on the evidence, I find that the landlord had served the Notice of direct Request Proceeding by registered mail, in compliance with the Act.

Given the above, I find that the tenant's evidence submitted with the Request for Review Consideration does not support the allegation that the arbitrator's decision was obtained by fraud, on the part of the landlord.

Pursuant to *Section 81(b) (ii)* of the *Residential Tenancy Act*, I must dismiss this application for review on the basis that it does not disclose sufficient grounds for a review. I find that the Applicant has not succeeded in demonstrating that the evidence contained in this Application would meet the criteria for granting a review under the ground cited. The tenant's allegation that the landlord obtained orders through fraud was not sufficiently proven to warrant a review hearing.

Therefore the tenant's application for review consideration is dismissed without leave and the decision and orders issued on September 24, 2013 remain in force.

Decision

The tenant is not successful in the Request for a Review Consideration based on fraud and the tenant's application is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 15, 2013

Residential Tenancy Branch